MESSAGE FROM THE GOVERNOR.

Mr. J. T. Bowman, private secretary to the Governor, appeared at the bar of the House, and, being duly announced, presented the following message from the Governor, which was read to the House:

Executive Office,
State of Texas,
Austin, Texas, Feb. 21, 1911.

To the House of Representatives:

I regret that a sense of duty impels me to interpose objection to the will of the Legislature in the passage of House bill No. 81, known as the Texarkana charter. The same is returned herewith without approval for such further consideration as you may desire to give it, as provided in Section 14 of Article 4 of the Constitution.

The bill was presented to me on January 27th, and on January 30th in pursuance of resolution passed by the House, said bill was returned to you and was repassed, after eliminating a provision providing for the construction of a viaduct by certain railroad companies in Texarkana.

INIATIVE AND REFERENDUM.

My objections to the bill are:

First, to Article 7, which provides for the initiative and referendum of ordinances. According to my conception of our system of government, the initiative, referendum and recall are repugnant to the principles underlying it. "The faith of the people of Texas stands pledged to the preservation of a republican form of government," says the Bill of Rights, and the power to change or to abolish the Constitution is subject to this guarantee only. To guard against the transgression of the high powers delegated to the government, the Bill of Rights excepts out of the powers of the Legislature the right to establish a form of municipal government that is not republican in form.

The initiative and referendum plan of government was well known and understood by the makers of our American system. It was discussed in the Convention that framed the Federal Constitution and was discarded as totally unfit for application to the principles of our system. After the framing of the Constitution, James Madison of Virginia, who afterwards became the fourth President of the United States, and is the reputed author of the Constitution, writing in defense of our system in the Federalist," and arguing against a pure democracy and in favor of a republican form of government like ours, uses the following language:

"From this view of the subject, it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short of their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions and their passions."

The initiative and referendum is the dream of theoretic politicians, and, as Madison tells us, it has ever been found incompatible with personal security or the rights of property.

In somewhat different form, it was the rule and ruin of the cities of Greece. After thousands of years of experience, it has been discarded by all stable governments. Only one small nation in Europe now employs the system, and it is practically without influence among the nations of the earth.

The division of the powers of our government was for a distinct purpose, to wit: that one should act as a check on the other, and it is distinctly provided that each department shall be confined to a separate body of magistracy, "and that no person, or collection of persons, being of one of these departments, shall exercise any power

properly attached to either of the others." The provisions of the Texarkana charter herein objected to are antagonistic to this principle of our State Constitution. The charter is also objected to for the reason that, after providing for the initiative and referendum plan of proposing and enacting ordinances, it provides for the recall of any elective officer. The plan of our government in the passage of acts by the Legislature, or by the legislative bodies prescribed for city governments, insures a hearing of those whose personal and property rights may be affected by the legislation proposed.

Section 1, Article 7, of the proposed Texarkana charter, contains the following language:

"Section 1. Any proposed ordinance may be submitted to the Board of Commissioners by a petition signed by the qualified electors of the city, equal in number to the percentage hereinafter required."

The foregoing language is almost identical with Paragraph 1, Article 8, known as the "initiative and referendum article" of the charter of the city of Dallas, which, among other things, provides:

"Any proposed ordinance may be submitted to the Board of Commissioners by a petition signed by registered electors of the city, equal in number to the percentage hereinafter required."

THE SUPREME COURT'S VIEW OF IT.

In a very recent decision of the Supreme Court of Texas, involving the validity of an ordinance regulating telephone rates, under the foregoing provision of the Dallas city charter, the court, speaking through Mr. Chief Justice Brown, makes the following statement:

"There can be no doubt that the authority to so regulate the business named in the said sections may be exercised by the Board of Commissioners. The question in this case is, had the voters the right, also, by the method of initiation prescribed to present the ordinance in question to the Board of Commissioners for submission to the qualified voters of the city?"

After discussing this question the court says, further:

"Can it be supposed that a Legislature would require a Board of Commissioners to secure a fair hearing to the party to be affected and yet would permit some unknown party to draft an ordinance specifying rates and regulations without the knowledge of any facts, and submit such ordinance to the popular vote where there can be neither an investigation nor any character of ascertainment of the facts. * * * If the charter provided for submission of such issues to the voters at large, its validity would at least be questioned, and the charter of a city is to its citizens and officers the measure of their authority over persons and property. That charter secured to the plaintiff in error 'a fair hearing,' and as such hearing could not be had in the adoption of this ordinance it was not enacted in accordance with the charter, and is void."

The language in the Dallas city charter and the proposed charter for Texarkana, as above quoted, is almost identical, and I understand the effect of the decision of the Supreme Court is that such ordinances as the one discussed by the court can not be fairly considered and enacted by the initiative and referendum method.

Undoubtedly our Constitution provides, in certain matters that affect a particular community, that the same may be referred to the voters of said community, or to a sub-division of the State, to determine for themselves whether or not they will apply the provisions of such statute to themselves. This is notably true with respect to our local option laws, regulating the liquor traffic, and to our stock laws, and to propositions to issue bonds and to vote taxes upon the people for certain purposes. This right is fundamental, and provided for in our organic law, and can be exercised without the general application of the initiative and referendum principle.

NOT A PART OF LOCAL SELF-GOVERNMENT.

It has been urged by some since the Texarkana charter was first presented to me for approval, that my opposition to the initiative, referendum and recall was antagonistic to my general views on local self-government. But this argument is made by those who are evidently seeking cause for criticism. It is not consistent with the truth of my position. I assert that the initiative, referendum and recall

is in no sense a part of the principle of local self-government. It strikes at the very vitality of our republican system and is antagonistic to representative government. The initiative, referendum and recall is socialistic and a complete departure from the system of government established by the fathers of the Republic. It is antagonistic to the theory that the government itself shall be divided into three separate parts, each acting as a check upon the other.

OURS IS A GOVERNMENT OF LAW.

Ours is a government regulated by law. Local self-government is a well defined principle and in perfect accord with the limitations on government established by the Constitution. The initiative, referendum and recall is the reverse—it is an appeal from the forms of law to the unlimited and unrestrained will of the majority and ignores the rights of minorities and of individuals, and by the same method could confiscate property. The initiative, referendum and recall ignores the doctrine of "due process of law"; it ignores the constitutional doctrine that "the accused shall be deemed innocent until his guilt is established." It is the doctrine that prevailed when they demanded the Innocent to be surrendered to them by Pilate. Pilate, under the influence of the mob, yielded, desiring to please those composing it. Some have tacitly defended the initiative, referendum and recall principle of government, no doubt, indirectly, because it gave them an opportunity to say I had forsaken the doctrine of local self-government, which I love to defend. But suppose the charter had stipulated that the local option laws of the State, prohibiting the liquor traffic, which are in effect in Bowie county, could have been set aside in Texarkana by the initiative and referendum provision of the charter. How many of these critics would have voted for the charter and thereby advocated the abandonment of a "government regulated by law"? The Constitution says local option shall remain in effect for two years, or longer unless there is an election held with contrary results. The Constitution says, also, that the term of all offices created under the Constitution shall be two years, or until a successor is elected and qualified. Is there a constitutional right in one case that is more sacred than in the other? Whither are we drifting in the mad rush for political advantage? May we not for a moment reason together and answer this question soberly and in the light of reason and law?

Ours is a government of defined and limited powers. The initiative, referendum and recall ignores all limitations and places unfettered and absolute power in the hands of the majority, and in many instances, would enable a handfull of agitators to dominate and control, through the action of a small percentage of the whole people. By invoking this un-American doctrine and applying its principles the guarantee of stability in government and of individual rights, and the protection of property, might all be subverted by, and subordinated to, the will of an irresponsible minority of agitators .

CONSISTENT OPPOSITION TO THE THEORY.

It is not amiss here, in stating my opposition to this policy, to refer to a speech made by me at San Saba, Texas, on July 29, 1909, in which the following language was used in discussing the initiative and referendum:

"There has sprung up in Texas in the very recent past an innovation, born of political cowardice and political hypocrisy. One of two things must follow if this innovation is to be adopted and become the practice in Texas. Either constitutional safeguards of personal and property rights will be overturned, or else the Democratic party will be destroyed. I do not favor the initiative and referendum plan of government. I prefer constitutional liberty to irresponsible absolutism. Let us preserve this as a constitutional government where the rights of minorities will be protected, for this is not a government of despotism, but of law. When we drift away from the principles of constitutional government we will cut loose from the moorings of our safety and drift like the Athenians did when control of the government was given to the man who could sway the crowd with his eloquence and set their feelings on edge and fire their passions, and in such a moment unmake and make governments. There can be no stability, peace or prosperity under such a rule—it is the rule of the mob

in its passion and fury; not the government of reason and judgment."

My position now is consistent with my opposition then to this new governmental fad. My views and opposition were thoroughly understood to all the people of Texas during the last campaign for Governor, and they ratified and endorsed these views by an overwhelming plurality.

I do not believe that the people of Texas at large have become inoculated with this new governmental disease as some of the politicians have. At any rate, the time has come to arrest if we can not eradicate the disease.

My second objection is to Section 8 of the Texarkana charter, providing for the "recall."

"RECALL."

While I believe the initiative and referendum is out of harmony with the spirit of our constitutional government, yet the recall is looked upon by me as even more dangerous. I have heard it stated by those who advocated it, that it is needed for the purpose of putting dishonest and corrupt men out of office. As a matter of fact, our Constitution and statutes provide for the summary removal of dishonest and corrupt men from public places. But a public officer, charged with corruption, is entitled to a trial on the charges against him. The recall would try and convict him contrary to the provisions of the Constitution.

Section 10 of the Bill of of Rights provides that in all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. The recall is in conflict with this provision. The same section of the Bill of Rights guarantees that the defendant "shall be confronted with the witnesses against him." Section 15 says that the right of trial by jury shall remain inviolate, and that the Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

The Texarkana charter bill, which the Legislature has sent to me for approval, ignores and would destroy all of these rights by establishing the principle of the recall, and upon real or false charges give to the majority voting, who might constitute a small minority of the qualified voters of Texarkana, power to eject a man from public office. It does more: It gives into the hands of agitators, as well as into the hands of the majority of those voting in an election, who, as I have already stated, might compose but a small minority of the citizenship interested, the power to remove a man from public office for discharging his duty and confers upon them the power to eject him for religious or political convictions.

The whole scheme is repugnant to the principles of liberty and law, the freedom of speech, and every other guarantee sacred to an American.

A BETTER REASON MUST BE GIVEN.

The defenders of the recall will have to furnish some better reason for its enactment than the assertion that it should be available for the removal of corrupt men from office. It would make cowards out of public officials. They would become subservient to the agitators, who are the ones that usually invoke its provisions. As I have already stated, a public official subject to this provision, in the pursuit of his lawful duties, would be subject to removal on account of his doing so if by performance of them he should give offense to any organized section of his people, or to the agitators who influenced them.

In an early decision the Supreme Court of California, in discussing the principles of our government, made this declaration:

"Our government is a representative republic, not a simple democracy. Whenever it shall be transformed into the latter—as we are taught by the examples of history—the tyranny of a changeable majority will soon drive men to seek refuge beneath the despotism of a single ruler."

Under the provisions of the recall a condition could be created which would be worse than the despotism of a single ruler. Good municipal government is a question of very great importance, and one which deserves the best attention of ripe statesmanship, but it will not avail much to adopt every new fad suggested as a balm for municipal sores and mismanagement.

There are other valid objections that might be urged to the proposed Texarkana charter, but I will not discuss them now.

LESS THAN ONE TENTH ENDORSED THE CHARTER.

Much has been said about the Texarkana charter receiving the endorsement of an overwhelming majority of the people of Texarkana. Upon inquiry the mayor of that city advises me that there were 1126 qualified poll tax paying voters in that city, and at the election for the endorsement of the proposed city charter only 155 votes were polled, 108 being for the charter and 47 against its adoption. The recall proposition received 111 votes to 30 against it. There was a fraction more than one-tenth of the qualified voters of Texarkana voting in the charter election, and the initiative and referendum clause in the same did not even provide for referring the charter back to the people for their adoption in case of its enactment. Such elections are a mockery and are usually participated in by a small minority of the people, led by agitators, or actuated by special interests.

Since the receipt of the bill the second time in the Governor's office, I have received petitions signed by 172 citizens of Texarkana, who declare themselves to be qualified voters, asking that I veto the Texarkana charter bill. As will be noted, there are a greater number of signatures to these petitions than the total number of votes cast in the charter election.

For the reasons assigned above, I return the bill to you herewith without my approval.

Very respectfully,
O. B. COLQUITT,
Governor.